Supreme Court, U. S.
FILED
NOV 13 1974
MICHAEL RODAK, JR., CLERK

No. 74-201

In the Supreme Court of the United States

OCTOBER TERM, 1974

CITY OF RICHMOND, VIRGINIA, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE FEDERAL APPELLEES

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OPINION BELOW

The opinion of the three-judge district court (J.S. App. B) is reported at 376 F. Supp. 1344.

JURISDICTION

The judgment of the district court (J.S. App. A) was entered on June 6, 1974. Notice of appeal (J.S. App. E) was filed in that court on July 15, 1974. The jurisdiction of this Court is invoked under 42 U.S.C. 1973c.

QUESTION PRESENTED

Whether the changes in voting practices resulting from a city's annexation of a predominantly white suburb and subsequent adoption of a plan for single-member district councilmanic elections abridge the right to vote on account of race or color, when the purpose of the annexation had been to maintain a white voting majority

in the city's at-large councilmanic elections but the effect of the subsequent adoption of the single-member district plan will be to afford black voters fair representation on the city council.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, is set forth at J.S. App. D.

STATEMENT

In 1969 the City of Richmond, Virginia annexed approximately 23 square miles of land, containing 45,705 white residents and 1,557 black residents. As the evidence recited by the district court and the special master established (see J.S. App. B, pp. 10b-13b; J.S. App. C, pp. 2c-7c), the purpose of the annexation was to maintain a white voting majority in the City's at-large councilmanic elections. An at-large councilmanic election was then held in May 1970, resulting in the election of eight white and one black city councilmen.

In early 1971, Curtis Holt, Sr., a black resident of the City, filed suit in the United States District Court for the Eastern District of Virginia, alleging that the annexation had the purpose and effect of impairing black voting rights, in violation of the Fifteenth Amendment. The district court upheld the plaintiff's contention and ordered a new councilmanic election, in which seven councilmen were to be elected at large from an area approximately within the City's old boundaries and two from approximately the newly annexed area. *Holt* v. *City of Richmond*, 334 F. Supp. 228 (E.D. Va.). The court of appeals stayed the election order and then reversed *en banc* (Butzner and Winter, JJ., dissenting) on the ground that the annexation was not entered into for the purpose of diluting black voting rights. 459 F. 2d 1093 (C.A. 4). This Court denied certiorari. 408 U.S. 931.

In the meantime, Holt had filed another suit in the same district court, seeking a judgment that the annexation was without legal effect because the City had failed to obtain prior approval as required by Section 5 of the Voting Rights Act of 1965 and requesting that the City's 1972 councilmanic election be enjoined. The injunction was denied by the district court but granted by this Court. 406 U.S. 903.[1]

Contemporaneously with that litigation, the City submitted its annexation plan to the Attorney General, who objected to the plan. The City then filed this action in the United States District Court for the District of Columbia, requesting a declaratory judgment that its annexation did not have the purpose or effect of abridging the right to vote on account of race or color. Holt and the Crusade for Voters of Richmond, an organization supporting the interests of black residents, intervened as parties defendant. After the decision in *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D. D.C.), affirmed, 410 U.S. 962, the City formulated four alternative plans for establishing single-member district councilmanic elections and submitted those plans to the parties for their review. The federal parties concluded that one of the plans, with further amendments suggested to the City by the Department of Justice, would, if adopted, sufficiently ameliorate the dilutive effects of the annexation to satisfy the requirements of Section 5. The City then adopted that plan, with the suggested amendments, in May 1973. The City thereupon amended its complaint to request a declaratory judgment approving the changes in voting

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[1]The district court subsequently enjoined further elections pending the outcome of the instant litigation. *Holt* v. *City of Richmond*, C.A. 695-71-R (E.D. Va.), Orders of October 12, 1972, and October 8, 1974.

practices resulting from the annexation as modified by the plan for single-member district councilmanic elections. The federal parties supported this request, which the intervenors opposed.

The three-judge district court denied the City's application for a declaratory judgment on the ground that the City had failed to prove "that it no longer had * * * a discriminatory purpose in retaining the annexed area after adoption of [the] single-member district ward plan" (J.S. App. B, p. 19b). The court reasoned that, to carry its burden, the City would have to demonstrate "by substantial evidence (1) that the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation, and (2) that the city has some objectively verifiable, legitimate purpose for annexation" (J.S. App. B, p. 20b; footnote omitted). The court determined that the City had failed to make either requisite showing. The particular ward plan adopted would not, in the court's view, effectively eliminate the dilutive effect of annexation, because whites were virtually assured a five-to-four majority on the City Council under that plan, whereas blacks would have had a significant chance of electing a majority of Council members in an at-large election within the pre-annexation boundaries. The court further sustained the special master's determination that there was no legitimate purpose for the annexation, on the ground that the evidence showed that the costs of administering the annexed area would exceed the revenues derivable from it.

DISCUSSION

1. In the court below, both the City and the federal parties proceeded on the theory that the adoption of a single-member district voting plan that ensured black voters fair representation on the City Council would remove the discriminatory taint of an otherwise impermissible annexation. See *City of Petersburg* v. *United States, supra.* The district court, however, held that where the principal purpose of the annexation had been discriminatory, the subsequent adoption of a new voting scheme that ensures black voters fair representation within the post-annexation boundaries is not of itself sufficient to purge that discriminatory purpose.

On reflection, we agree with the district court that once it has been found that the principal purpose of an annexation was to maintain a white majority on a city council, that purpose is not purged by the mere showing that blacks will have a fair minority representation on the post-annexation city council. Cf. *Gomillion* v. *Lightfoot*, 364 U.S. 339. In other words, we agree that the City's adoption of a single-member district voting plan does not, standing alone, prove that the City "no longer [has] * * * a discriminatory purpose in retaining the annexed area * * * " (J.S. App. B, p. 19b).

2. We disagree, however, with one of the tests applied by the court below in determining whether an impermissible discriminatory purpose still exists. The court required the City to establish that "the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation" (J.S. App. B, p. 20b; footnote omitted). As we read the district court's opinion, that test requires the City to adopt a ward plan that would result, or be likely to result, in a black majority on the City Council. Since blacks

constitute a minority of approximately 42 percent within the City's post-annexation boundaries (see J.S. App. B, p. 14b), such a ward plan would entail substantial racial gerrymandering of a kind which would itself be of questionable vailidity under Section 5 of the Voting Rights Act. The single-member district plan adopted by the City meets the *City of Petersburg* standard by ensuring fair black representation on the City Council—four of the nine councilmen would represent substantially black wards, and a fifth would represent a "swing" ward whose population would be roughly 59 percent white and 41 percent black (J. S. App. B, p. 23b)—and we do not believe that black voters are entitled to the substantially disproportionate majority representation that the opinion below apparently requires. Because of the importance of this question to the process of municipal annexations, we believe it warrants plenary review.

3. On the other hand, we now accept the validity of the second test applied below, *i.e.*, that the City must show that it presently "has some objectively verifiable, legitimate purpose for annexation" (J.S. App. B, p. 20b). Little evidence was introduced with respect to this question in the district court; the parties, including the federal parties, concentrated on the validity of the ward plan under *City of Petersburg* and not on the nondiscriminatory purposes that might now justify retention of the annexed area.

The federal parties, however, are aware of considerations not reflected in the record that tend to show that the annexation presently serves legitimate, nondiscriminatory purposes. For example, the annexation enables the City, which has a separate school system from those in the adjoining counties, to maintain racially integrated schools having a substantial number of white students. See

Bradley v. *School Board of City of Richmond, Virginia*, 462 F. 2d 1058 (C.A. 4), affirmed by an equally divided court *sub nom. Richmond School Board* v. *Board of Education*, 412 U.S. 92. Evidence of this nature could have been offered at trial had it then been deemed pertinent. Such evidence might well have overcome the fiscal data on which the district court relied in finding the absence of any present legitimate purpose for retaining the annexed area within the City's boundaries. Accordingly, if this Court upon review agrees with us that the district court applied an improper standard to the City's ward plan, we believe it would be appropriate to vacate the judgment below and remand the case for the taking of additional evidence on the question whether the City now has a legitimate purpose in retaining the annexed area.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

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NOVEMBER 1974.

DOJ-1974-11